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Consulting
Network Services
Competitive Activities
Regulatory Assistance

Jan Reimers
President

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April 12, 1999

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth St. S.W.
Room TW-A325
Washington, DC 20554

RE: In the Matter of Notice of Proposed Rulemaking, Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68.

Dear Ms. Roman Salas:

Enclosed herewith for filing with the Commission are the original and four copies of the Comments of ICORE, Inc. in the above-captioned matter.

Please acknowledge receipt hereof by affixing a notation on the duplicate copy of this letter furnished herewith for such purpose and remitting same to bearer.

Sincerely,

Reimers

Enclosures:

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of:	)	
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Notice of Proposed Rulemaking,	)	
Inter-Carrier Compensation for	)	CC Docket No. 99-68
ISP - Bound Traffic	)	

Comments of ICORE, Inc.

The consulting firm of ICORE, Inc. (ICORE), on behalf of its many small, rural incumbent local exchange carrier (ILEC) clients, respectfully submits these Comments in the above-captioned proceeding.[1] ICORE provides consulting, network services, regulatory assistance access and cost separations studies, and related services to many of the nation's smallest most rural ILECs.

I. INTRODUCTION

Burgeoning Internet usage is placing a terrible strain on the resources of many ILECs. Under current arrangements, they have virtually no reasonable means of recovering the often substantial costs of additional switching equipment, EAS circuits and other facilities required to handle the unprecedented growth in ISP - bound traffic.

The treatment of this traffic as "local" in jurisdictional cost separations studies

[1]Inter-Carrier Compensation for ISP-Bound Traffic, Notice of Proposed Rulemaking, CC Docket No. 99-68, Rel. February 26, 1999. Comments due April 12, 1999, Reply Comments due April 27, 1999 (NPRM)

exacerbates the problem for those ILECs using a cost basis of settlement for interstate access. Existing costs are over-assigned to local from interstate, at the same time as these ILECs are incurring new and additional costs to cope with the ever increasing Internet usage.

ICORE, after consultation with various of its clients that are severely burdened by the costs associated with ISP - bound traffic, offers comments in two major areas where cost recovery issues need to be addressed:

(1) The appropriate treatment of ISP-bound traffic in jurisdictional cost separations studies.

(2) Transport compensation for LECs that deliver traffic, primarily over EAS facilities, to ISPs in other exchanges.

II. TREATMENT OF ISP-BOUND USAGE IN JURISDICTIONAL COST SEPARATIONS STUDIES.

The Declaratory Ruling[2] accompanying the NPRM finds "that ISP-bound traffic is jurisdictionally mixed and appears to be largely interstate."[3] Despite this determination, the Commission continues to exempt Enhanced Service Providers (ESPs), which include ISPs, from paying interstate access charges.[4]

In seeking comments on the jurisdictional separations issues occasioned by its Declaratory Ruling, the Commission confirms that "with respect to current arrangements...for

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[2]Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Declaratory Ruling, CC Docket No. 96-98, Rel. February 26, 1999. (Declaratory Ruling).

[3]Declaratory Ruling, ¶ 1.

[4]Id, ¶ 20.

those LECs subject to jurisdictional separations both the costs and the revenues associated with such connections will continue to be accounted for as intrastate."[5]

These current arrangements, most notably the assignment of increasingly large amounts of Internet usage to the intrastate (local) category in the development of separations factors, causes tremendous hardship to small ILECs. The unweighted interstate DEM factor decreases, artificially allocating more switching and related costs to the intrastate (local) jurisdiction, which in turn reduces the ILECs' share of interstate access revenues.

Now, with the Commission's decision that this usage is largely interstate, in would seem appropriate to remove it from the intrastate (local) jurisdiction in the cost separations process. Ideally, in fact, usage that is defined as interstate should be included as interstate in the development of jurisdictional separations factors.

If this were done, along with facilities such as EAS circuits used to deliver ISP traffic categorized as "jointly used" (for interstate and intrastate) and separated on that basis, cost-based ILECs would recover their costs of providing what has been determined to be a primarily interstate service.

It will be argued, of course, that since ISPs are exempt from paying interstate access charges, there are no revenues to cover those costs. That my be true. But it is also true that there are no corresponding intrastate revenues to cover ILEC costs that are increasingly being driven

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[5]NPRM, ¶ 36.

to the intrastate jurisdiction under the "current arrangements." A serious mismatch – or more realistically, a no match – of costs and revenues is already occurring.

A workable solution for now, and perhaps into the foreseeable future, would be to treat ISP-bound traffic, related costs, and revenues as unregulated. This would seem to comport with the Commission's "strong federal interest in ensuring that regulation does nothing to impede the growth of the Internet – which has flourished to date under our 'hands off' regulatory approach – or the development of competition,"[6] while still allowing ILECs the opportunity to recover their costs and earn a fair rate of return.

If treated as unregulated, ISP-bound traffic would be excluded totally from cost study factor development. This would drive costs neither to interstate nor intrastate in the separations process. Coupled with the exclusion of such items as counts of EAS circuits associated with (or added for) Internet traffic, there would be a basically neutral effect on jurisdictional cost allocations.

The exclusion of Internet usage and related costs altogether from cost separations seems the fairest method of resolving this issue, as long as there are no interstate access charges or other interstate tariff rates to cover the costs of what is primarily an interstate service. It is certainly not equitable to drastically reduce an ILEC's interstate access revenues by treating huge amounts of this interstate traffic as intrastate, either, particularly when no consistent compensation mechanisms exist to cover those artificially derived intrastate costs.

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[6]Declaratory Ruling,¶ 6.

III. TRANSPORT COMPENSATION FOR LECs THAT DELIVER TRAFFIC, PRIMARILY OVER EAS FACILITIES, TO ISPs.

As the Commission rightfully notes in the Declaratory Ruling, "Section 251(b)(5) of the Act requires all LECs to establish reciprocal compensation arrangements for the transport and termination of telecommunications'."[7] The Commission itself "acknowledge(s) that, no matter what the payment arrangement, LECs incur a cost when delivering traffic to an ISP that originates on another LEC's network."[8]

Actually, the originating LEC also incurs costs when it delivers traffic to another LEC's exchange where the ISP is located. Often, originating LEC's EAS facilities are used to carry such traffic. The phenomenal growth in Internet usage has forced many small LECs to add substantial numbers of EAS circuits, at significant cost. Under most existing EAS arrangements, however, no additional revenues are derived form the additional usage or facilities.

The Commission's decision in the Declaratory Ruling causes a dilemma. EAS is basically a voice grade, intrastate service allowing customers in one exchange to terminate calls to another exchange on a "toll free" basis. The Commission, however, has defined these packet-switched, non voice-grade ISP-bound calls as components of "end-to-end transmissions," a "substantial portion" of which are interstate.[9] In the many cases where EAS is used to deliver Internet traffic to ISPs, then, there is clearly interstate use of EAS facilities.

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[7]Declaratory Ruling, ¶ 7.

[8]NPRM, ¶ 29.

[9]Declaratory Ruling, ¶ 18.

ISPs benefit greatly from the "free" delivery of Internet traffic over EAS. The Commission's goals of fostering Internet usage and the Telecommunications Act's objective to "preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services"[10] are well served. IXCs are compensated for the provision of facilities from the ISP to the network. Many LECs are compensated for terminating the ISP traffic, either through reciprocal agreements or the provision of business lines to the ISP.

<u>But those LECs whose EAS facilities are used to originate the Internet traffic, who often are forced to add large numbers of additional EAS circuits so their regular, non-Internet, voice-grade customers don't encounter severe blockages, are virtually never compensated for provision of these additional facilities.</u>

Of course, large local rate increases might help offset the rapidly increasing switching and trunking costs arising from the heavy Internet use of EAS facilities. But general, across-the-board increases are patently unfair when specific cost causers – ISPs and their customers – are imposing the cost burdens. Substantial local rate increases for small, rural LECs, particularly when caused by an interstate service, would also seem to fly in the face of the Commission's long standing universal service policies.

The Commission, therefore, must assure that some other forms of cost recovery are implemented to help these LECs recover their Internet-related EAS costs. As stated above, the Telecommunications Act requires reciprocal compensation for the costs of such transport. The

[10]Id, ¶ 6.

Commission confirms that LECs incur these costs, and that the usage responsible for them is interstate.

Absent a federal system of access or other charges for this usage, which would allow cost recovery through the interstate cost separations process, LEC compensation must come from intrastate tariffs or inter-carrier compensation agreements. While the exact arrangement should probably be left to each state commission, some possible compensation mechanisms include:

- The use of dedicated, rather than EAS trunks, with the cost passed on to the ISP or their customers.
- The use of 800 or other "toll free" numbers in lieu of EAS facilities.
- Usage sensitive pricing for ISP customers using EAS facilities.
- Inter-carrier agreements where the ISP or the terminating LEC compensates the originating LEC for use of its EAS facilities.

The Commission, which has defined ISP - bound traffic as interstate, and which has acknowledged that LECs incur costs in delivering such traffic, must establish broad guidelines for state commissions to follow in prescribing LEC compensation for Internet use of EAS facilities. And it must assume final authority in cases where the private parties and the state commissions can't reach agreement over the form or level of such compensation.

IV. CONCLUSION

The Commission, by defining ISP - bound traffic as interstate, has an obligation to help small, rural LECs recover their costs of handling this traffic.

The total exclusion of this usage in jurisdictional cost separations studies will at least prevent the inappropriate assignment of Internet costs to the intrastate (local) jurisdiction.

The issuance of guidelines that require LECs to be fairly and equitably compensated when their EAS facilities are used to deliver ISP - bound traffic will help relieve the burden caused by their having to make extensive plant additions to carry this interstate traffic.

Respectfully submitted,

ICORE, Inc.

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